IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8674 of 1999

with

SPECIAL CIVIL APPLICATION No 8687 of 1999

with

SPECIAL CIVIL APPLICATION NO 2465 TO 2489 OF 2000

WITH

SPECIAL CIVIL APPLICATION NO 2492 TO 2628 OF 2000

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT STATE KHADI GRAMODYOG BOARD PENSIONERS ASSOCIATION

Versus

GUJARAT STATE KHADI GRAMODYOG BOARD

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Appearance:

MR MB GANDHI for Petitioners.

Mr. DD Vyas, Sr. Advocate for M/S.VYAS
ASSOCIATES for Respondent No. 1 Board
Mr. AD Oza, GOVERNMENT PLEADER
for Respondent No. 2 State of Gujarat.

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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/10/2003

CAV JUDGEMENT

Before adverting to the facts of the present case, it would be proper to refer to the decision of the Karataka High COurt in the matter of YR Shenoy v. Syndicate Bank, reported in 2003 II LLJ page 977, para 11 and 12 as the same are important in view of the facts of the present case. Therefore, the observations made by the Karnataka High COurt in the said decisions are reproduced as under:

"11. Re point No. (i): Right to gratuity was the subject matter of various decisions of the Supreme Court. The principle deducted from those decisions can be broadly stated as under:

The fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to provide for payment of gratuity. On the enactment of Payment of Gratuity Act, 1972 a statutory liability was cast on the employer to pay gratuity. Pension and gratuity coupled with contributory Provident Fund are well recognized retiral benefits. Pension and gratuity are both retiral benefits ensuring that the workman who has spent his useful span of life in rendering service and who never got a living wage, which would have enabled him to save for a rainy day, should not be reduced to destitution and penury in his old age. As a return of long service he should be assured social security to some extent in the form of either pension, gratuity or provident fund whichever retiral benefit is operative in the establishment. It must not be forgotten that it is not a gratuitous payment, it

has to be earned by long and continuous service. A scheme of gratuity and a scheme of pension have much in common. Gratuity is a lump sum payment while pension is a periodic payment of a stated sum. Undoubtedly both have to be earned by long and continuous service. If gratuity is a retiral benefit and can be earned as a matter of right on fulfilling the conditions subject to which it is earned, any rule conferring absolute discretion not testable on reason, justice or fair play which denies the same must be treated as utterly arbitrary and unreasonable and discarded. Rules for payment of gratuity became incorporated in the Standing Orders and thereby acquired the status of statutory condition of service, an arbitrary denial referable to whim, fancy or sweet will of the employer must be rejected as arbitrary. The claim to absolute discretion not to pay gratuity even when it is earned is a hangover of the laissez fair days and utterly inconsistent with the modern notions of fair industrial relations and, therefore, it must be rejected as ineffective and hence unenforceable.

12. Therefore, gratuity is a statutory right to be earned by long and continuous service, which is payable as a retiral benefit, a definite sum as lumpsum payment on retirement. It is a right if accrued cannot be taken away by agreement between the parties. Amount payable is also definite, by agreement between the parties it cannot be reduced, but it could be enhanced."

Heard learned advocate Mr. M.B. Gandhi for the petitioners in both the groups; Mr. D.D.Vyas, learned Sr. Advocate for the respondent No.1 Board and Mr. A.D. Oza, learned GP for respondent NO.2 in both the groups. The petitioners in these two groups were working with the respondent No. 1 Board and they retired from service after reaching the age of superannuation as per the Board Rules. All the petitioners in these two groups are receiving their pensionary benefits from the respondent Board, means, all of them are entitled to get pension from the respondent Board. However, the question is as to whether the petitioners who have retired prior to 1.1.1996 are entitled for the revision of pension on the basis of the recommendations made by the 5th Pay Commission or not. The petitioners in the second group of petitions have retired subsequent to 1.1.1996 and prior to 4th May, 1998. The question in respect of the

said petitioners is as to whether those petitioners are entitled for the revision of pension on the basis of the recommendation made by the 5th Pay Commission or not with effect from 1.1.1996, for the amount of gratuity on the basis of their last drawn salary as per the recommendation made by the 5th Pay Commission.

It is not in dispute between the parties that the first respondent board which is established in the year 1973 is receiving 100 per cent finance from the State Government. Respondent No.1 Board has been created under the relevant provisions of the Bombay Khadi and Village Industries Act, 1960. The Board is also defined under section 2(a) of the said Act.Under Chapter II Section 3, the State of Gujarat issued notification in the official gazette and established the Board for the whole of the State of Gujarat and the said notification was published in the Gazette and since then, the Board is in existence and, thus, it is an establishment created by the State of Gujarat. Chapter V of the Regulations provides that the finance, accounts and audit of the Board and it also provides that the budget and all other aspects are to be prepared and to be approved by the State Government and 100 per cent finance is provided by the State Government and the Board is a creation of the Statute and, therefore, liable to the writ jurisdiction of this court under Article 12 of the Constitution of India. In the respondent No.1 Board, since 1973, pension scheme is made applicable to the Board and all the persons who were in service as on 12th November, 1973 and who were the members of the Contributory Provident Fund ("CPF" for short) were made eligible for the pension scheme. Resolution in this connection was passed on 6.11.1987. All the petitioners who were the employees of the first respondent board have retired after 1.1.1986. It is not in dispute that the employees of the Board are entitled for pension and in fact, employees of the respondent no.1 board who have retired have been given the pension. The respondent Board is paying pension to the employees those who have retired from service but the question is that the pension received by the petitioners is the pension available to them as per the amount prior to the recommendations made by the 5th Pay Commission, upto 31st December, 1995 and the pension which was being paid to the petitioners prior to the recommendations of the 5th Pay Commission has continued but the effect of the recommendations made by the 5th Pay Commission has not been given and the pension has not been revised though the respondent board has adopted the resolution and the Government has approved the same. The Government issued directions and the effect was given by the Government as

well as by all the Government Boards in the form of interim relief and accordingly all the pensioners of the board were given the interim relief prior to the implementation of the 5th Pay Commission Report. Copy of such pay slip in respect of one petitioner Shri Ishwarbhai B. Patel has been produced by the petitioners alongwith the petition. According to the petitioners, in spite of the interim relief being given and inspite of the fact that the scales as per the 5th Pay Commission Report have been accepted by the Board but so far as the petitioners are concerned who are 135 in number, who have retired prior to 1.1.1996 and to each one, though the benefit of interim relief is given, the Board is not calculating and is not given full effect of the pay scales of the 5th Pay Commission Report and that is how the petitioners are not getting full pension which they ought to have received on implementation of the 5th Pay Commission Report by the Board. The details have been given by the petitioners about the names and salaries and how much amounts they are entitled for the period between 1.1.1996 to 30.9.1998 is produced in the form of statement at Annexure-D. According to the petitioners, the employees of the board who retired after 1.1.1996 have been given complete impact and effect of the 5th Pay Commission Report and accordingly those who have retired after 1.1.1996 are receiving at present full pension as per the report of the 5th Pay Commission but the list of such sixteen employees who have been given full pension including the effect of 5th Pay Commission report is produced at Annexure E to the petition. In respect of the second group of petitions being SCA NO. 8687 of 1999, same is relating to 25 employees who retired from service after 1.1.1996 and who were given retirement benefits qua leave encashment and difference of salary on the basis of the 5th Pay Commission Report but the respondent Board has denied the benefit available on the basis of the 5th Pay Commission report in respect of the benefit of pension and gratuity and the same has not been paid and for that, said petitions have been filed by the petitioners. Annexure-A to the petition being SCA No. 8674 of 1999 is the resolution dated 24.10.1999 passed by the members of the association to take appropriate legal action against the Board. Annexure-B to the said petition is the list of the members of the petitioners on whose behalf the petition is filed. Annexure C is the copy of the pay slip of one petitioner Ishwarbhai B. Patel. According to the petitioners, employees of the board, in all respects and for the purpose of pension, are being treated at par with the employees of the State Government and in this connection, order has already been passed by the Board on 1st March, 1989 wherein it has

been directed that to the employees of the Board, pension scheme is made applicable and it has also been resolved that all the employees of the State Government to whom the pension scheme is made applicable and with all the changes and modifications which are made applicable to the employees of the State Government, same pension scheme with all such changes and modifications will also be made applicable to the employees of the first respondent board with effect from 30th January, 1986. Copy of the said office order dated 1st March, 1989 implementing the pension scheme is produced by the petitioner at annexure F to SCA No. 8674 of 1999. It is the case of the petitioners that the Member Secretary of the Gujarat State Khadi Gramodyog Board has also passed office order dated 16.10.1990 in the subject of pension cum gratuity wherein it has been mentioned that the Government of Gujarat has granted approval for making applicable the pension cum gratuity scheme with retrospective effect to the employees of the Gujarat State Khadi Village Industries Board who have retired from service on superannuation and it has also been mentioned in the said order that in this scheme family pension scheme is also being included as per the clarification made in the Government of Gujarat Resolution dated 31.8.89. Copy of the said office order dated 16.10.1990 is produced at Annexure G to the said petition. Vide Annexure H page 30 to the said petition, the petitioners have produced true copy of the resolution no.5 of the Board Meeting dated 31.7.91 for the year 1991-92. Agenda no.4 thereof was relating to application of the Superannuation Rules of the Government employees as per the resolution of the Government dated 31.9.89 to the employees of the Board and it has been resolved to adopt such rules in respect of the employees of the Board. According to the petitioners, regarding necessary regulations and the office orders which have been issued and came to be passed, they are in consonance with the notifications of the State of Gujarat Khadi Gramodhyog Board by which necessary powers under section 30 sub section (2) (b) of the Cottage and Village Industries Act, 1960 and with the previous approval and sanction of the Government, rules and regulations have been framed which are known as the Gujarat State Khadi Gramodyog Board Officers and Servants (Conditions of Service) Regulations, 1973 and in this regulation, Regulation 2 (5) is relevant which has been reproduced by the petitioners in the memo of petition. Same is also reproduced as under for the sake of convenience:

"Pay and Other Conditions of Service :

(1) When the pay and other conditions of service of any officer or servant are laid down in a contract entered into by the Board with him, the officer or servant shall be governed by that contract in so far as the pay and other conditions of service are concerned.

(2) In other cases, the Bombay Civil Service Rules, 1959, as applied from time to time to Government servants, shall apply to the officers and servants of the Board as regards their pay, joining time, foreign service, maintenance of records of ' service, addition to pay, travelling allowance, combination of appointments, leave, revised leave and superannuation."

Therefore, according to the petitioners, when the pay and other conditions of service of any officer or servant are laid down in a contract entered into by the Board with him, the officer or servant shall be governed by that contract in so far as the pay and other conditions of service are concerned and in other cases, the Bombay Civil Service Rules, 1959, as applied from time to time to Government servants, shall apply to the officers and servants of the Board as regards their pay, joining time, foreign service, maintenance of records of service, addition to pay, travelling allowance, combination of appointments, leave, revised leave and superannuation and, therefore, in view of that, the action of the respondent board in not implementing the resolution and not following the resolution which is not obligatory but mandatory liability of the board is not fair and the board cannot refuse the same as the employees have a statutory right to get the pension and gratuity according to the rules and regulations of the Board. The petitioners have also pointed out that the Board has already written to the Commissioner of Cottage and Village Industries, Gujarat State on 15.5.1999 to the effect that the employees who are entitled for pension and to discharge their liability, it is communicated in the letter that calculated the amount is payable by way of pension as well as by way of gratuity and the letter also indicates that the increase in the said liability has come into effect from 1.1.1996 owing to the implementation of the recommendations made by the 5th Pay Commission and on that basis, different calculations have been made and the reference of the employees who have retired prior to 1.1.1996 is also made therein. According to the petitioners, it has also been admitted

that the respondents no.1 Board is a public undertaking and the pension scheme is also made applicable at par with the Government employees and in this back ground, the liability that has been created for which a demand is made. Copy of the letter in that regard sent to the Commissioner under the signatures of the Chairman of the first respondent board is produced by the petitioners at Annexure I to the said petition. According to the petitioners, before filing the present petitions, various efforts were made by the petitioners but of no avail. Ultimately, petitioner association wrote a letter to the Board dated 22.7.1999 in the similar line but that has not been responded by the respondent board. Copy of the said letter is produced by the petitioners at Annexure J to the petition. In short, according to the petitioners, taking into consideration all the aforesaid aspects, it is beyond the shadow of doubt that the members of the present petitioner association are entitled to the pension and that too the board is bound to give the impact to or implement the recommendation of the 5th Pay Commission Report as adopted by the State Government and as adopted by the Board and as soon it is a liability of the Board to calculate the pensionary benefits of these employees and to regularly pay the same. According to the petitioners, as per the list annexed to the said petition, the said list is indicating the exact calculations of the difference which the respondent board is liable to pay and therefore according to that calculations, each and every employee of the board is required to be paid the difference of the pension and from future date also, newly calculated pension giving effect of the 5th Pay Commission Report should be paid till such pension is revised. According to the petitioners, the board has illegally not implemented and paid the pension by calculating on the basis of the effect of 5th Pay Commission Report and, therefore, the petitioners who have got the legitimate right tog et the pension but they have been illegally deprived of the full pension and the outstanding amount of pension from 1.1.1996 to 30.9.1998 comes to more than 17 lacs and this amount has been illegally utilized by the board instead of paying the same to them embers of the petitioner association and, therefore, same is required to be paid to the petitioners with interest thereon at the rate of 18 per cent p.a.

In view of this back ground, according to the petitioners, the board has to pay such benefits as per the provisions of law and whatever liability that arises or accrues for the purpose of giving effect of 5th Pay Commission or for paying pension then, in that case, when

the Government is financing to the Board, it is the duty of the board to see that the proper provisions are made in the budget and claimed from the Government but the Board has no authority whatsoever to evade the liability on the ground that there is financial difficulties and when the Government is financing 100 per cent, then, the question of making hue and cry of any financial difficulties on the part of the board does not arise and if the Board has not made any provision in the budget, then, in the alternative, it is also equally a liability of the State Government to see that an industry undertaken by the State Government is run properly and all the liabilities which have been created under the statute are properly discharged. Therefore, one of the liability which is created with regard to the service conditions of the employees of the board does include the liability to pay the pension and accordingly all the petitioners who have retired prior to 1.1.1996 are entitled for such benefits but they have been denied the benefits arising out of the report of the 5th Pay Commission.

The petitioners have filed one additional affidavit in view of this court's order dated 3.11.1999 (Coram : Rajesh Balia,J.). The petitioners were required to bring before this court a resolution of the Government regarding implementation of 5th Pay Commission Report for the employees who have retired prior to 1.1.1996. In compliance of the said directions, the Government of Gujarat has already published a resolution with regard to the revision of pension of pre-1996 pensioners and the members of the family pension scheme etc. Xerox copy of such resolution dated 20th January, 1998 has been annexed to the additional affidavit in reply wherein it has been clarified that it is made applicable tot he employees who have retired prior to 1.1.1996 and in that very connection, a resolution has been passed by the Government of Gujarat. It has been submitted that under the circumstances, even those who have retired prior to 1.1.1996 are also entitled for the implementation of the 5th Pay Commission Report and as per this resolution, it is the duty of all the institutions to see that the pensions are worked out accordingly and paid to the concerned employees who have retired prior to 1.1.1996.

Affidavit in reply on behalf of respondent no.1 Board has been filed through one KB Bhatt, Member Secretary of the Board wherein the deponent has submitted that the petition is not maintainable since the petitioner is not a registered association and as such,

the petitioner association is not entitled to file the petition on behalf of its members. It has also been submitted by the said deponent that the main claim is depending on the disputed questions of fact to be decided and, therefore, petition under Article 226 of the Constitution of India is not a proper remedy. According to the deponent of the said affidavit in reply, the respondent NO. 1 is not a statutory authority within the meaning of Article 12 of the Constitution of India. According to the deponent, the board is an autonomous body. The deponent has denied that according to the recommendations made by the 5th Pay Commission as per its report, there is non payment of pension to some persons but not in case of persons who retired prior to 1.1.1996. According to the Board, persons who have retired prior to 1.1.1996 are not entitled for the pension as claimed and the rights of the petitioners have been denied by the respondent. It has also been contended by the respondent Board that this being individual right and since no fundamental right has been violated, the petition is not maintainable. According to the deponent, Khadi Board is acting under the provisions of Khadi Village Industries Act, 1960 and the rules framed thereunder; every resolution passed by the Government by itself does not apply to the Board automatically. The averments made in para 5 and 6 of the petition have not been admitted by the deponent. It is denied that in view of the fact that the effect of the 5th Pay Commission Recommendation being given, the pension is liable to be paid on that basis. It has been denied that there were repeated representations, numerous talks and conversations as alleged. It has been submitted that even all the persons mentioned in Annexure D have raised any grievance regarding the pension, in ay case, even if it is assumed that the revised pay scales are made applicable on 1.1.1996, that would be applied only to those who were in service on that day and it does not automatically give benefits tot he persons who were not in service on that day or can claim on that basis. As regards annexure "C", it was submitted that annexure C is merely a pay slip of one Shri Ishwarbhai B Patel which does not carry to any further. The calculations made by the petitioner at annexure D are not admitted by the respondent and it is submitted that the same are not correct. It has been submitted that in any case, it is a money claim where the concerned persons can file a civil suit and the petition is, therefore, not maintainable. It has been submitted that the petition is barred by limitation; the petition is not a proper remedy; that the pension which has been paid to each one of them has been accepted by them without any protest or objection and, therefore, present

petition cannot be filed by the petitioners. It has also been submitted that the persons shown in annexure E who are serving on the day when the sanction was granted by the State Government that is to say on May 4, 1998.It has also been submitted that they are a different class by themselves. It has been denied that for the purpose of pension, employees of the board are treated at par with the employees of the State Government. It has been submitted that the Board is governed by the statutory rules regarding the conditions of service. It has been submitted that the documents Annexure F and G seems to be the office orders issued by the then Secretary of the Board; that the conditions of service are being provided by the statutory rules after following the procedure laid down and after getting ultimate sanction from the Government; that even if a resolution is passed, it cannot be enforced unless there is statutory amendment made and duly sanctioned by the State Government in accordance with the provisions of the Act. The Board has denied that it is liable to pay the difference according to the calculations made by the petitioners and every employees of the Board. The Board has also denied that the Government is giving 100 per cent grant and, therefore, it is the liability of the Board to pay the pension to all the employees who are shown in annexure-B. It has been denied that the Government resolution dated 20.1.1998 is applicable by itself to the employees. On the basis of the aforesaid submissions, the Board has submitted that the petitioners are not entitled for any reliefs and, therefore, the petitions are required to be dismissed with costs.

Against the said reply filed by the first respondent Board, the petitioners have filed rejoinder through one Kalabhai A. Patel, Secretary of the petitioner association wherein it has been submitted on behalf of the petitioners giving reply to the contentions raised by the respondent board in detail and certain documents have been produced along with the affidavit in rejoinder. One document has been produced giving reply to the contentions raised by the respondent board that the board is not financed 100 per cent by the Government or is not receiving grant from the Government. The petitioners have produced letter dated 12.10.1998 Annexure R/1 wherein admission was there to the effect that the Board is receiving 100 per cent finance from the State Government which is relating to even pensionary benefits. Second letter dated 15.5.1999 is also produced on record vide annexure R/2 wherein it has been admitted by the Board that the board is receiving 100 per cent finance from the State Government which is also relating

to the pensionary benefits. Except that, no other documents have been produced by the petitioners alongwith the affidavit in rejoinder.

Reply to the rejoinder of the petitioners has been filed by the respondents through one KB Bhatt, Member Secretary of the Board wherein it has been clarified that the Board is paying pension to the employees as per the rules and regulations of the board and the board is bound to function as per the Government rules, regulations and the guidelines issued from time to time and has to depend on the availability of the funds from the Government. It has been submitted that the amount of pension is not covered under the grant paid by the Government under the Head of Non Plan. It has been submitted that the resolution dated 4.5.98 sanctioning the revision of pay does not cover the provisions for payment of pension or gratuity amount. It has also been submitted that the resolution dated 7.1.1998 passed by the Government also not specify about revision of pension of the employees of the Board/Corporation. It has been submitted that it is not true that the employees are given discriminatory treatment as alleged; that it is true that the board has to depend on the grant made available by the Government. It has been submitted that against the requirement of Rs.108 lakhs,t he Government has provided the grant of Rs.93 lakhs only and there is paucity of funds even for the day to day work of the board. It has also been submitted that the Board can adhere to the resolutions passed by the Board itself but the resolutions passed by the Government are not automatically applied to the Board unless specific guidelines are received from the Government. It has been submitted that the annexures produced by the petitioner are internal communications between the Board and the Government and the same are not public documents.

One further affidavit in reply has been filed by one PM Vidyarthi, Member Secretary of the respondent Board on the ground that the petition was disposed of by this court on 17.10.2000 under which it was stated that in case the decision by the committee goes adverse to the petitioner or any of the petitioners, liberty as granted to them for revival of the petitions by filing a simple note. The deponent has submitted that the petitioners have not come out with the case that the decision is adverse to any of them. It has been submitted that the notice of revival of the petitions was served on the board on 4.5.2002 and therefore, said affidavit in reply has been filed. It has been submitted that the claim made by the petitioners in these petitions regarding

difference of pension which was the subject matter before the committee would come to Rs. 1,16,55,600.00 as on August, 2001; there would be recurring liability every month and it would also have an impact on many other benefits; that so far as the board is concerned, they will not be in a position to bear the said burden; that the board has got no independent income of its own from which this huge burden can be met with. After submitting that the petitioners are claiming benefits on the basis of the revised pay scales by the 5th Pay Commission subsequently to their retirement, it has been submitted that the pension is being paid on the basis of the average of last 10 months salaries drawn; if the persons who retired after 1.1.1996 or thereafter get the pension because of higher pay scales at the time of superannuation, both stand on a different basis and are governed by two different sets, and they cannot be equated. It was submitted that the granting of additional benefits has got a huge financial implications on the board. It has been submitted that the decision of the board cannot be said to be arbitrary.

In view of the above, on behalf of the petitioners, one affidavit has been filed in respect of the subsequent event by Natvarlal M. Patel. According to the petitioners, after the order passed by this Court, on 17.10.2000, Chief Secretary of the State called meeting on 18.1.2001 and minutes of the said meeting was sent alongwith the letter dated 1.2.2001. It was submitted that in the said meeting, both the parties made a representation and finally order was passed on 9.8.2001. According to the said resolution, the Government relied on the resolution dated 31.8.1989 and held that the Khadi Board to bear all the liabilities of pensioners. Copy of the letters dated 1.2.2002 and the GR dated 31.8.1989 are produced at annexure A and B to the said affidavit filed on behalf of the petitioners. Para 3 of the said affidavit dated 9.10.2002 filed by Mr. Natvarlal M. Patel on behalf of the petitioners is important and, therefore, same is reproduced as under in verbatim:

"3. I further say as per the provisions of the Bombay Khadi and Village Industries, 1960 Chapter VI section 26 provides that in discharge of functions, each board shall be guided by such instructions on question of policy as may be given by the State Government and in case of dispute, the decision of the State shall be final. Otherwise also far all planned and non planned expenses budget is put in advance to the

State Government same is sanctioned on 100 per cent basis. So far non planned grant is concerned, the provision for pension is also made and the Government has sanctioned, last 61-62 to 90-91 full grant statement is produced herewith at Annexure-D."

As per annexure D referred to by the deponent in his affidavit filed on behalf of the petitioners in para 3, details have been given by the petitioners that from the year 1962 to 1991, each year, budget expenses and against that, there is sanction by the State Government which includes expenses of pension and gratuity and the same is being sanctioned by the State Government each year budget submitted by the board. Page 92 of the petition namely annexure D to the said affidavit is relevant and material in the facts of the present petitions and, therefore, same is also reproduced as under:

"Non Plan :

Year Sanctioned Budged Budget Expenditure

1962-63 4.80 4.15
1963-64 5.23 5.00
1964-65 10.00 10.00
1965-66 13.00 13.00
1966-67 8.00 7.60
1967-68 9.65 9.65
1968-69 11.55 9.90
1969-70 11.55 10.58
1970-71 11.55 12.80
1971-72 12.50 15.32
1972-73 17.88 16.81
1973-74 20.07 20.07
1974-75 22.60 22.60
1975-76 26.00 23.76
1976-77 30.00 29.94
1977-78 31.00 29.70
1978-79 30.00 30.00
1979-80 35.50 35.50
1980-81 37.00 35.00
1981-82 40.00 37.80
1982-83 44.00 43.90
1983-84 54.00 53.77
1984-85 60.00 58.80
1985-86 60.30 53.54
1986-87 54.00 73.82
1987-88 88.25 88.25
1988-89 79.00 87.13

1989-90 84.64 98.64
1990-91 138.30 138.30"

At this juncture, it is required to be noted that these details which have been given by the petitioners have not been disputed or denied either by the State Government or by the respondent No.1 Board. No counter to that effect has been filed by the State Government or by the Board for disputing or denying the correctness thereof. Therefore, one fact is very much clear while considering the case from both the sides that the State Government is financing 100 per cent to the respondent Board and each year budget is required to be placed by the Board before the State Government and in such Budget, each year, expenses of pensionary benefits were included by the Board and the same were sanctioned by the State Government without any objections as per the GR dated 31.8.89 and the High Power Committee Decision dated 9.8.2001.

In respect of special civil application no. 8687 of 1999, there is no much change about the facts and the defence of the respondents. The only distinctive feature is to the effect that 25 petitioners covered by the said petition retired during the period from 1.1.1996 and 31.3.1998 means prior to 4th May, 1998. They were not given the benefit of 5th Pay Commission Report as well as the revised pension on the basis of the 5th Pay Commission Report and they are also not given the benefit of revised gratuity on that basis. That is the only distinctive feature and except that, there is no other change in substance. However, certain documents are important and relevant and, therefore, I am referring the same as under:

Annexure - A is the list wherein names of the petitioners and the date of their retirement have been mentioned. ANnexure B page 18 is the copy of resolution no. 27 wherein decision was taken by the respondent board that the 5th Pay Commission Report has been accepted and it has been made applicable to the employees and the officers of the board w.e.f. 1.1.1996 and the matter is relating to finance and, therefore, procedure is required to be followed as per the Resolution of the Finance Department. Annexure C page 19 is the Government Resolution dated 4.5.1998 in respect of the employees and the officers of the board where by letter dated 23.3.98 and 24.3.98 of the Finance Department and letter of the respondent board dated 16.4.1998, the State Government has accepted the proposal made by the Board to the State Government by letter dated 16.4.98 and therefore the

State Government has directed the Board to implement the 5th Pay Commission report means Revision of Pay Rules, 1998 and to give new pay scales to such employees/officers of the Board on the basis of the scale to scale and the State Government has sanctioned the scales of the 5th Pay Commission in favour of the employees and the officers as per the revision attached to the schedule w.e.f. 1.1.1996. Item No. (5) of the said resolution annexure C specifically provides that the revised pay scales have to be made applicable subject to the provisions of the Gujarat State Khadi Gramodyog Board Gujarat State Service (Revision of Pay) Rules, 1998 and as regards the payment of the arrears arising out of the revision of the pay scales also, procedure will have to be followed only as per the resolution of the Finance Department dated 7.1.98 bearing No. PGR.1098.1.M. It also provides that for meeting with the additional expenditures/arrears arising out of the applicability of the revision of pay, it will be necessary for the Gujarat Rakua Khadi Gramodyog Board to make provision in that regard in the budget and to submit the proposal thereof through the Budgetary Provisions Department to the Budget Department. Annexure D page 23 to the said affidavit contains the names of sixteen employees who have retired after 1.1.1996 who have received full benefits as per the recommendations made by the 5th Pay Commission. Annexure-E is the statement prepared by the petitioner as to how much amount they are entitled to for the arrears as per the implementation of the 5th Pay Commission Report.

Annexure-F is the resolution of the Finance Department dated 7.1.1998 (Reference of which has been made in item no.5 of the resolution at Annexure-C referred to above) under which the State Government has implemented 5th Pay Commission Report of the Central Government in favour of the employees of the State Government wherein item No. 2,3,4,5 and 6 are relevant.

Item No.2 thereof provides that the revised pay scales and the dearness allowance will be given to the employees of the State Government on the basis of the Centre with effect from 1st January, 1996 whereas since the Government of India has given the HRA, CLA and other allowances with effect from 1st August, 1997, benefit thereof will be given to the employees of the State Government with effect from the said date.

Item No. 3 thereof provides that the sanction for giving new pay scales equivalent to the pay scale available to the employees as per the Higher Pay Scale

will be given.

Item No. 4 thereof provides that in he report of the 5th Pay Commission of the Centre, there are recommendations as regards higher pay scale scheme like a State. Unless and until any decision is taken by the Central Government thereon, higher pay scale scheme of the State Government should continue. As and when any decision is taken in that regard by the Central Government, this scheme will be reviewed by the State Government.

Item NO. 5 thereof provides that in cases of the employees who have retired prior to 1st January, 1996, their pension will have tobe revised a fresh on centre basis and as per the formula of the centre and payments will have to be made accordingly.

Item No. 6 thereof provides that in the matter of the employees retiring after 1st January, 1996, all the benefits of retirement on the basis of the centre will be granted.

Meaning thereby, the State Government employees were getting the benefit of 5th Pay Commission in respect of salary, service benefit and retirement benefit of those who have retired prior to 1.1.96, after 1.1.1996 and the same was adopted by the respondent Board and, therefore, petitioners in both these two groups are entitled for the same and similar treatment. Against the said affidavit in reply, reply has been filed by respondent No. 1 through its Member Secretary Shri K.B. Bhatt raising same and similar contentions. The Board has raised the contention that the Government resolution dated 4.5.98 alongwith the resolution dated 7.1.1998 are not correct and the same has been denied. It has been submitted that the claim of 25 petitioners is exaggerated. The Board has raised contention that the petitioners have not shown as to how they are entitled for the said benefit. It is denied that the Board is getting 100 per cent finance from the Government as alleged. It has been contended that the Government has not agreed to shoulder the liability of arrears of pension and the Board is not having funds to make payment of the additional claim made by the petitioners; the board is not liable to make any such payment as alleged; they are not entitled for the pensionary benefits and the said amount has been wrongly paid to the employees; there is no discrimination or violation of Article 14 of the Constitution of India as alleged; the petitioners are not entitled for any relief and the petitions are not

maintainable in law.

It is required to be noted that the State Government has filed reply in this petition by one Ms. Mina Bhatt working as JS I/M dated 27th April, 2000. According to the State Government, the petitioners have got no right with regard to the implementation of the recommendations made by the 5th Pay Commission as the petitioners were never given the benefit of pension but by resolution dated 31.8.1989, the petitioners have been given such benefit. While deciding the claim of benefit of pension, the Government has issued the above Resolution dated 31.8.89 wherein the petitioners were declared to be entitled for such benefit of pension but in the said GR dated 31.8.89 in clause 6 thereof, it has been mentioned that the respondent board will have to bear the expenses which is going to be incurred while implementing this pension scheme and even today also, the Board is bearing the expenses of the said pension scheme. It was submitted that at no point of time, the liability of the Government was fixed with regard to the payment of pension to the Board employees. With regard to the aspect of 5th Pay Commission, it was submitted that the Government has, vide its GR dated 4.5.98 accepted and revised the scale of pay of the employees of the Board and it was also submitted that at no point of time,t he Government had agreed top ay the pension or the pension as per revised pay scale. It was submitted that in view of that, the petitions are misconceived on facts as well as on law. It has been submitted that the board has been constituted as per the Bombay Khadi and Village Industries Act, 1960 and thereafter, the Government by its moderate policy towards such employees had enhanced the benefit of pension to the employees of the Board by resolution dated 31.8.89 but that is not entitling the petitioners to get benefit of revised pension from the Government. As per clause 6 of the said resolution, it is incumbent upon the Board to pay the revised pension, if any. At last, it has been submitted that in view of the above, the petitions are required to be dismissed with costs.

The respondent Board has also filed reply to the petition through KB Bhatt, Member Secretary of the Board wherein it has been clarified by the Board that the Board is paying to its employees as per the rules and regulations and the Government guidelines depending upon the availability of the funds from the Government and the amount of pension is not covered under the grant paid by the Government under the head of Non Plan. It has also been submitted that the resolution dated 4.5.98

sanctioning the revision of pay does not cover the provisions for payment of pension or gratuity amount. It has also been submitted that the resolution dated 7.1.1998 passed by the Government also not specifying about the revision of pension of the board employees. It is not true that the employees are given discriminatory treatment. It is true that the Board has to depend on the grant made available by the Government. Against the requirement of Rs.108 lakhs, the Government has provided the grant of Rs.93 lakhs only; there is paucity of funds even for the day to day work of the board. It has been submitted that the Board can adhere to the resolutions passed by the Board itself but the resolutions passed by the Government are not automatically applied to the Board unless specific guidelines are received from the Government. It has been submitted that the annexures produced by the petitioner alongwith the rejoinder are internal communication between the Board and the Government and the same are not public documents. At last, it has been submitted that in view of what is stated above, the petitions are liable to be rejected with costs.

Then again the Board has filed affidavit in reply through PM Vidyarthi pointing out similar averments as has been made by him in SCA No. 8674 of 1999 and, therefore, I am not reiterating the same.

After narrating the pleadings of the parties as aforesaid in respect of the subject matter, I am referring to the submissions of the learned advocates for the parties.

Mr.Gandhi, learned advocate appearing for the petitioners has submitted that the petitioners are entitled for the benefits of 5th Pay Commission and on that basis, for the revision of their pension but the same has been illegally denied to the petitioners without any just and valid ground. The also submitted that the right of pension is covered by Article 21 of the Constitution of India which is relating to right to life which include livelihood and, therefore, the action of the respondents is violative of Article 21 of the Constitution of India. He also submitted that the Board has been created by the State Government enacting statutory provisions and is being financed 100 per cent by the State Government. In short, it was his submission that the Board is the baby of the State Government and it should be maintained by providing and sanctioning the budged of each year. He also submitted that the 5th Pay Commission Report has been accepted by the State

Government and looking to the various office orders annexed to the present petition, it is clear that the Board has accepted all the Government Resolutions in respect of the pay, revision of pay and pension and other consequences arising out of such revision of pay and pension. He also submitted that the Board has accepted the resolutions of the Government regarding revision of family pension. In short, it is his submission that whatever benefits given to the employees of the State Government as a consequence of the acceptance of 5th Pay Commission Report has been made applicable to the employees of the Board, by the State Government by passing various resolutions and office orders referred to hereinabove and, therefore, now there is no question about the entitlement of the petitioners for getting such benefits. According to him, the only question is the burden of such expenses, who will bear such burden? Whether the State will bear the same or the Board will bear the same is the question to be decided. According to his submission, since the petitioners are the employees of the Board, which is also a creation of the State Government, it should be the joint and several liability of both. According to his submission, the State Government is having complete control over the Board in respect of its administration and finance. He also submitted that the figures from the year 1960 to 1991 have been given by the petitioners on affidavit of subsequent event that in each year, expenses of pension have been included in the budged by the Board and accordingly, the budget has been sanctioned including the pension of the board employees, by the State Government. In support of these submissions, he made reference of various correspondence between the Board and the Government where the proposal made by the Board has been accepted and sanctioned by the Government in respect of the expenses, additional expenses relating to pay, pension, revision of pay and pension etc. of the employees who have retired prior to 1.1.1996 and subsequent thereto. According to his submission, since the State Government has not sanctioned the said additional expenses, the tie between the Board and the State Government has been created which has deprived the present petitioners of their right to get pension and revision thereof as per the recommendations made by the 5th Pay commission Report and the petitioners are the sufferers of the tie between the State Government and the Board. According to him, the Board is a State or other instrumentality of the State within the meaning of Article 12 of the Constitution, created as per the enactment of the State Government and, therefore, it is the duty of the Board and the State Government too to act

fairly and justly. According to his submissions, the Board is not justified in raising contention about the entitlement of the petitioners for such relief and the State Government has not been justified in taking the contention that it is not at all the responsibility of the State to shoulder the burden of pension and revision of pension in respect of 5th Pay Commission Report. According to him, it is clear discrimination and arbitrary exercise of powers by the respondents depriving the petitioners of their fundamental right to get pension revised in accordance with law and, therefore, violative of Article 14 and 21 of the Constitution of India. He has referred to the office orders and the correspondence annexed to the petition in support of his submissions and has also submitted that in letter dated 15.5.1999 of the Board, expenses of the petitioner has been included but the State Government has not given any response to the same. He also submitted that the interim relief was given with an expectation of the report of the 5th Pay Commission to the petitioners in both these groups which would mean that the petitioners herein were entitled for such benefits flowing from the recommendations made by the 5th Pay Commission including the revision of pension and gratuity on the basis of such revision of pay and pension. He also submitted that the representations were made time and again by the petitioners before the respondents but the same were not positively considered by the respondents. He has read over the letter dated 20.1.98 page 41 wherein it has been decided that the 5th Pay Commission Report has been applied to those employees who have retired prior to 1.1.1996 and their salary is required to be revised and on that basis, they are entitled for the revision of pension from the employer. According to his submissions, said resolution dated 20.1.1998 is applicable to the Board and the same was accepted by the Board subsequently. He also submitted that the Board has taken unnecessary contentions in its reply filed before this Court which are not at all genuine and the same appears to have been taken only with a view to evade the genuine claim of the petitioners because most of the facts are not in dispute between the parties and the same are based on the office orders issued by the Board and the Government Resolutions issued by the State of Gujarat and accepted by the Board. Apart from that, as regards the contention of the Board that on 4.5.98 when the sanction has been given by the State Government, on that day, those employees who were in service were governed by the report given by the 5th Pay Commission and accordingly, they are entitled for the revision of pension and otherwise those employees who retired prior to that date are not entitled for such

revised scale and revised pension and the gratuity as a consequence thereof, it was his submission that such contention is totally illogical because the benefit of 5th Pay Commission is not based upon the resolution which was passed by the Board but it is based upon the resolution passed by the State Government which is made fully applicable to the Board by the State Government and, therefore, said contention is totally illogical. According to his submissions, most of the contentions raised by the Board in its reply are contrary to its own record and, therefore, same cannot be taken into consideration because those contentions are baseless, having no support from the record. According to his submission, this is nothing but the mental development of an advocate which may be labelled as an afterthought of the respondent board. As regards the contention of the Board that the board is not in a position to bear the burden, it was submitted by him that this is not an answer to deny the legal claim of the petitioner because, ultimately, in respect of each aspect or each expenses, the Board is getting 100 per cent finance or grant or financial support from the State Government. According to him, there are provisions for even supplementary budget and there are also provisions in the Act to obtain loan from the State Government. Thus, according to him, there are various sources specified in the Act for implementing the same and the Board can easily pay the said benefits to its employees without making such unnecessary hue and cry before this Court. He also referred to the relevant rules and regulations of the Act and and pointed out the regulation at page 91 of the Act wherein as per item no.5 of sub section (2), it has been decided under the Act that the officer or the servant of the Board shall be governed by that contract in so far as the pay and other conditions of service are concerned. Based upon the aforesaid provisions, it was his submissions that the Bombay Civil Service Rules, 1959, as applied from time to time to Government servants, shall apply to the officers and servants of the Board as regards their pay, joining time, foreign service, maintenance of records of service, addition to pay, travelling allowance, combination of appointments, leave, revised leave and superannuation. He also submitted that each year, annual report is required to be prepared by the Board and according to the annual report of the year 1999-2000, in pension fund account, there are balance of Rs.15 crores and at page 21 also, it has been mentioned that the amount which are credited in the account of the Board. Even in the non plan account as per page 42 of the annual report, in Union Bank of India, Rs.172 crores are remaining as a balance in the credit of the

respondent no.1 board. Therefore, in short, it was his submission that the in view of the aforesaid orders and the resolutions of the Government as discussed hereinabove, the petitioners are entitled for the revised pay scale on the basis of the 5th Pay Commission Report and also for the revised pension and the gratuity on the basis of the Government Resolution which are made applicable to the Board and accepted by the Board and, in view of that, the board and the State is not justified in depriving the petitioners of their legitimate rights. According to his submissions, delay has taken place because of the non cooperative attitude and approach on the part of the respondents and, therefore, this Court should grant the reliefs in favour of the petitioners without being influenced by such delay. It was also his submissions that as such, there is no limitation prescribed for approaching this Court by way of petition under Article 226 of the Constitution of India and the person seeking relief under Article 226 of the Constitution has to approach this Court within the reasonable period. According to him, in the facts and circumstances of the case, it cannot be said that the petitioners have approached this Court after unreasonable period. According to his submissions, the petitioners were vigilant about their rights, they were representing their case before the authorities after the report was submitted by the 5th Pay Commission and accepted by the State Government and, therefore, there is no any delay at all. According to his submission, legitimate claim of the petitioners has wrongly denied by the respondents and the respondents have utilized the amount of benefits of such legitimate claim for such a long period and, therefore, the petitioners are entitled for interest on the said amount at the rate of 18 per cent p.a.

On the other hand, learned Sr. Advocate Mr.D.D. Vyas appearing for the respondent Board has submitted that from the annual report for the year 1999-2000, whatever amount has been shown by Mr. Gandhi which is in the credit of the respondent Board account are relating to the amount of special scheme and the same is required to be appropriated and utilized for implementation of the scheme in question and the same cannot be appropriated or utilized by the board for any other purpose. According to him, whatever amount shown by Mr. Gandhi has been paid by the Board in the next year for implementing the scheme in question and, therefore, according to him, said amount has already been utilized in the next year by the board and this being the amount meant for special scheme under the Act, it cannot be appropriated for the purpose of making payment as claimed by the petitioners. Thus,

according to the learned Sr. Advocate Mr. Vyas, the Board is not having any fund and, therefore, the board is not in a position to pay the amount to the petitioners as demanded by the petitioners. He has, however, fairly submitted that the board is having full sympathy towards the petitioners as its employees. He also submitted that the Board is not having any objection if the State Government will make payment of such claim to the petitioners. According to him, the board will welcome the same but if the State Government is not prepared to shoulder such responsibility, the Board is unable to shoulder the same and, therefore, no relief should be granted to the petitioners by holding the board responsible for the payments thereof. He also submitted that the respondent board is not bound to make any payment to the petitioners as prayed for. He also submitted that as per the recommendations made by the 5th Pay Commission, wherein pay and the pay scales of the employees were been revised, same was accepted by the Board on 20th January, 1998 w.e.f. 1.1.1996 and, therefore, the employees, those who were in service as on 20th January, 1998 are entitled for such benefit of the said revision and except those employees, those who have retired prior to 20th January, 1998 are not entitled for such revision of pay and the pay scale and they are not entitled for any arrears of revision of pay scale and as such, they are also not entitled for any gratuity on that basis. Learned Sr. Advocate Mr. D.D. Vyas has made reference to the office orders attached to the petition. According to Mr.Vyas, such office orders were issued by the member secretary of the respondent Board. He also made a reference to the GR dated 31.8.1989 and read over the entire resolution before this court. As per the said GR, it is made clear that the Government is not duty bound to pay any amount to the Board in respect of the pensionary benefits of the employees of the Board. Therefore, now the question is that whether, at the time when the Board has prepared the Budget, expenses of the pension amount has been included in the budget or not and if it has been included, whether it has been sanctioned by the State Government with inclusion of such amount of pensionary benefit or not. In this regard, it was submitted by him that the petitioners have filed additional affidavit which is at page 79. He referred to para 3 thereof. He referred to the averments made by the petitioners in the said affidavit of subsequent event that as per annexure D to the said affidavit (Page 92) which is relating to the period from 1960 to 1991, the budget has been sanctioned by the State Government which was placed by the Board including the expenses of pensionary benefit of each employee. He submitted that

the respondent board has not denied these averments made in para 3 and the State Government has also not denied the same. Therefore, according to him, since it has not been denied either by the first respondent or by the State Government, the ultimate burden will be upon the State Government to make the payment to the petitioners towards revision of pay, pay scale and revision of pension and the gratuity etc. in respect of the board employees as per the report of the 5th Pay Commission. According to him, in view of page 92, it can be said that it is the ultimate burden of the State and not that of the respondent no.1. According to him, the board is receiving various amounts from the State Commission and the Central Commission under the Central Act but after receiving the said amount, same is required to be utilized for the scheme which is being implemented by the State through the Board and they are required to give account of such amount to the respective State and the Central Commission. He made reference of page 38 of the Act, Form III Rule 5 which provides that each year, annual estimate is required to be prepared by the board. He emphasized that in rule 5 page 93, sub section (3), the term 'superannuation' has been mentioned which is relating only to age limit but it does not include the benefits of superannuation including the amount of pension and gratuity. He also emphasized that the Bombay Civil Service Rules would not directly come into picture and yet the pensionary benefits have been paid to the employees of the respondent board. He also submitted that while considering their petition being SCA No. 8687 of 1999, page 18, which is the Board Resolution NO. 27 dated 31st March, 1998 as per which the Board has accepted the 5th Pay Commission report w.e.f. 1.1.96 and the Board has to implement the same as per the resolution passed by the Finance Department. As per the GR dated 4.5.98 page 19, the State Government has accepted the recommendations made by the 5th Pay Commission and it was made applicable to the respondent Board and the Board has to act accordingly for implementing the same as per the Finance Department Resolution dated 7.1.1998. He also referred to page 25/26 of the FD Resolution dated 7.1.98. Item no. 5 and 6 of the said resolution are applicable to the Government employees those who have retired prior to 1.1.1996 and subsequent to1.1.1996 and as per item no.5 and 6 thereof, employees of both the groups were entitled for the revision of pay scale as per the 5th Pay Commission as well as revision of pension and the amount of gratuity. He also submitted that the pay scale is governed by different set of rules and similarly, pension is also governed by different set of rules. He made reference to the definition of the term 'pensionable pay'

as per rule 9 clause 41 of the Bombay Civil Service Rules wherein last 10 months' average at the time of actual date of retirement is required to be calculated for granting benefit of pension. Therefore, according to his submission, so long as the said definition is not amended as pensionable pension under rule 9, clause 41, then, the petitioners are not entitled to any revision of pay scale after the retirement from service because, at the time when they actually retired, as per whatever pensionable pay as defined under the BCSRs, their pensionable pay was calculated by taking average of last 10 months' actual pay received on the date of retirement and that is not included in the revision of pay scale subsequent to the date of retirement and, therefore, so long as the said definition is not amended, an employee who has retired is not entitled for any revision of pay scale for the purpose of pension and gratuity. He also emphasized that the revision of pay scale is applicable to the employees who were in service at the time of revision of pay was accepted by the respondent board. He also emphasized again rule 41/46 of the revised pension rules and submitted that the Board has to consider the actual pay of the employee at the time of his retirement and, therefore, no benefit of subsequent revision of pay could be given to such an employee. In short, it was his submission that if at all it is declared that the petitioners are entitled for the reliefs prayed for in these petitions, it is the ultimate burden of the State to shoulder the same and not the Board because the respondent is receiving 100 finance from the State Government. It is also his submission that the Board is not having any fund to distribute to its employees and, thus, the board is unable to make such payments. The third submission is that the board is challenging the entitlement of the petitioners for revision of pay and pay scale and gratuity on the basis of the recommendations made by the 5th Pay Commission. Challenge to the entitlement is based upon the definition of pensionable pay as per the BCSRs and, therefore, the petitioners are not entitled for such benefit. He has, however, admitted that whatever government resolutions and the office orders issued by the Government and adopted by the Board has been binding to the board and the board has to implement the same. In view of that, according to my opinion, the substance of the submissions made by Mr. Vyas is itself is contradictory to each other. Learned senior advocate Mr. Vyas has relied upon certain decisions of the apex court in support of his submissions. One is the AIR 1997 SC page 2763 in the matter of KL Rathee v. Union of India and others. In para 12 of the said judgment, it has been observed by the

apex court as under:

"12. Clearly appears from all these cases that Nakara's case (AIR 1983 SC 130) is not a case of universal application irrespective of the facts and circumstances of the case. When the Government decided that the pension was to be calculated on the basis of average salary drawn over a period of last ten months, it was held in Nakara, that this principle has to be applied even to those persons who had retired before the notified date. That, however, does not mean that the emoluments of the person who were retiring after the notified date and those who have retired before the notified date holding the same status must be treated to be the same. This argument was specifically negatived by the Constitution Bench in the case of All India Services Pensioners' Association (AIR 1988 SC 501) (supra) What the petitioner is calculating in this case is more or less the same relief as was denied to him in the above case. "

He has also relied on the decision of the apex court in the matter of State of Punjuab and others versus Boota Singh and others reported in (2000)3 SCC 733. In para 7 of the said judgment, it has been observed by the apex court as under:

"7. On merits we find that the retirement benefits which are claimed by the respondent are benefits which are conferred by subsequent orders / notifications.Therefore, persons who retired after the coming into force of these notifications and order are governed by different rules of retirement than those who retired under the old rules and were governed by the old rules. The two categories of persons who retired were governed by two different sets of rules. They cannot, therefore, be equated. Further, granting of additional benefits has financial implications also. Hence, specifying the date for the conferment of such additional benefits cannot be considered as arbitrary. "

He has also relied upon the judgment of the apex court in the matter of State of Punjab and another versus JL Gupta and others reported in (2000) 3 SCC page 736. In para 4 and 5 of the said judgment, it has been observed by the apex court as under:

"4. In Boota Singh case it has also been held that the benefit conferred by the notification dated 9.7.1985 can be claimed by those who retire after the date stipulated in the notification and those who have retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old rules, i.e. the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implications and the specific date for the conferment of additional benefits cannot be considered arbitrary. It was further held that: (SCC p.735,para 8);

'In the case of Indian Ex Services League v. Union of India [(1991) 2 SCC 104 : 1991 SCC (L & S) 536 : (1991) 16 ATC 488 : (1991) 1 SCR 158], this Court distinguished the decision in Nakara case [DS Nakara v. Union of India (1983) 1 SCC 305 : 1983 SCC (L & S) 145] and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of pension to every retiree, irrespective computation of pension be different. We need not cite other subsequent decisions which have also distinguished Nakara Case. The latest decision is in the case of KL Rahee v. Union of India [(1997) 6 SCC (L & S) 1253 : (1997) 4 Scale 384] where this court after referring to various judgments of this court, has held that Nakara Case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. The respondents are not entitled to claim benefits which became available at a much later date to retiring employees by reason of changes in the rules relating to pensionary benefits.'

5. The controversy involved in the present appeal and connected appeals is squarely covered by the aforesaid decision. The respondents are thus not entitled to claim benefits under the notification dated 9.7.1985 since the said benefits became available on a much later date to the retiring employees by reason of change in the rules relating to pensionary benefits. In this view, the judgment of the High Court cannot be sustained.

He has also relied upon the judgment of the apex court in the matter of Union of India vs. R. Sarangapani and others reported in 2000 (4) SCC page 335. He has relied upon the observations made in para 9 and 10 of the said judgment in particular, which are reproduced as under:

"9. The Full Bench of the Central Administrative Tribunal, Madras had therefore to decide the question whether the benefit given as per the Government OM dated 31.3.1992 should also be extended to those appointees who were appointed to technical posts and who underwent a training before 1.1.1986.The tribunal, after referring to various judgments of this court came to the conclusion that the date 1.1.1986 had a nexus with the commencement of the recommendations of the fourth pay commission and hat was a relevant factor to be taken into consideration in finding out whether the cut off date 1.1.86 was arbitrary or not. The second relevant aspect that was taken into account was the extent of financial burden which was involved if the benefit mentioned above was to be extended even to those who had training prior to 1.1.1986. It was true that the claim of those appointed prior to 1.1.1986 was only that they could be given notional benefit from 1.1.1986 and actually from a later date. But even so, the net result would be that one more increment would become payable to all those persons appointed to technical posts earlier to 1.1.1986. It was therefore held that these factors were relevant circumstances to be taken into consideration for not extending the benefit backward beyond 1.1.1986. The tribunal also considered the question whether the cut off date 1.1.1986 could be held to be properly selected or whether it could be said that it was picked up out of a hat. It was pointed out that the question of commencement of the date was discussed in the National Council (JCM) between the employees and the Government and after taking into account various demands made by the employees, the said date was arrived at. At first the decision was] to give notional benefit only from 1.10.1990 and later on, the decision was to grant it to those who had undergone training after 1.1.1986 but that they would get the benefit notionally from 1.1.1990. The tribunal relied upon a judgment of

this court in Union of India v. PN Menon for holding that financial burden was one of the relevant considerations. On the basis of the above reasoning, the full bunchy of the Madras Tribunal finally stated that the order of the Government deciding the cut off date as implementing the Government OM dated 31.3.1992 and the OM dated 22.10.1990 was entirely valid and that the applicants were not entitled to the reliefs and that the earlier judgment of the Bangalore Tribunal was not correct.

10. We are of the view that the learned counsel for the Government of India was right in relying strongly upon subsequent decision of the Full Bench of the Central Administrative Tribunal, Madras Bench dated 22.1.1996 and in our opinion, the reasons given by the said tribunal in the said judgment, are correct. "

Lastly, he placed reliance upon the judgment of the apex court reported in the matter of State of West Bengal and Another vs West Bengal Government Pensioners' Associations and Others, in 2002 (2) SCC 179, para 24 and 25 of the said judgment are reproduced as under:

24. Again in K.L. Rathee v. Union of India the case of the petitioner was that following Nakara case he had to be given the same amount of pension as other employees of his rank irrespective of the date of retirement. The Court noted that Nakara did not strike down the definition of "emoluments" and held that : (SCC pp. 10 & 11, paras 8 & 10)

"Nakara case does not lay down that the same amount of pension must be paid to all persons retiring from government service irrespective of the date of retirement. ....Even if pension is calculated on the basis of the same formula the basis of calculation has to be the average of the last ten months' emoluments. This principle of adopting last ten months' emoluments as the basis for calculation of pension must be uniformly applied to all persons drawing pension from the Central Government. This was all that was laid down in Nakara case. It, however, did not lay down that

> the quantum of emoluments drawn during the last ten months of service of each government employee must be taken to be the same for this purpose. ...The emoluments have to be calculated according to the government rules in force at the time of retirement of the employees."

(emphasis supplied)

25. Consequently in the present case for the period in question, namely, pre-1-1-1986 to 3112-1995 when the definition of "emoluments" was not amended and pension continued to be calculated on the basis of the unrevised emoluments of the pre-1986 pensioners, no parity in the amount of pension can be granted.

Relying upon the observations made by the apex court in the aforesaid judgments which I have reproduced hereinabove, learned Senior Advocate Mr. DD Vyas has submitted that when the pay rules are not applying, then, they are not entitled for the benefit of pay revision. According to him, the petitioners are claiming the reliefs on the basis of the administrative circulars but there are no statutory provisions or the regulations under which the petitioners can claim such relief. He also submitted that the Government Resolution dated 31.8.1989 is not applicable to the petitioners. He, however, submitted that if ultimately this court comes to the conclusion that the petitioners are entitled to such reliefs, then, it is the ultimate burden of the State Government as the Board is not able to meet with such expenditure. He estimated the total burden of such relief which comes to Rs. 2 crores and submitted that the board is not able to pay such an amount. On the basis of the aforesaid submissions, he prayed for dismissing all these petitions with costs.

I have also heard the learned Government Pleader Mr. A.D.Oza for the State. He has submitted that this Court has, by order dated 17.10.2000, disposed of these petitions in terms that the Chief Secretary Shall constitute a High Level Committee under his Chairmanship with three other members i.e. Secretary, Finance Department, Secretary to Village and Cottage Industries and Law Secretary. He further submitted that the said

High Level Committee has submitted its report on 9.8.2001 which is at page 84. According to the said report submitted by the Committee, the Committee has come to the conclusion that it is the burden upon the respondent Board to pay the benefit of pension as per the 5th Pay Commission Report and not of the State Government. Mr. Oza has, therefore, raised the contention that since the Board has not challenged the said report of said High Level Committee constituted as per the order of this court dated 17.10.2000, same is binding to the respondent No. 1 Board and, therefore, all these petitions are required to be dismissed qua respondent No.2 State of Gujarat. He also submitted that since the Board or the petitioners have not made any representation against the said report of the High Level Committee, same is binding to the petitioners as well as the Board and, therefore, these petitions are required to be dismissed qua State of Gujarat. He also pointed out that number of the Boards and the Corporations have been created by the State of Gujarat, financed 100 per cent by the State of Gujarat and, therefore, it is not the burden of the State of Gujarat to pay each and every expenses of such board and, therefore, State is not responsible to pay the revised pension and gratuity as claimed by the petitioners in these groups of petitions. He also submitted that if the State is held responsible for this burden, then, it is very difficult for the State Government to run its administration and various other public welfare activities under the various Acts. He also emphasized on page 88 which is the resolution of the State Government dated 31.8.1989, relied upon para 19, item no. 6 and submitted that the State Government has made it clear that the State Government will not pay any grant to the respondent Board about the expenses of pension. He also submitted that the Board is having immovable properties which are available with it to meet such expenses and if the board is not having any source, it can dispose of such properties to meet with such liabilities. He also submitted that such boards and corporations are given various type of subsidies and grants by the State Government He has read over the reply of the State in SCA No. 8687 of 1999 filed by Ms. Meena Bhatt. He also emphasized paragraph 4 thereof and submitted that it is the burden upon the Board and not upon the State Government to meet with such contingency and expenditure. It was his submission that it is not the burden upon the State Government to make payment of the revised pension, gratuity as claimed by the petitioners in one group of petitions as it was clarified by the State Government in its resolution dated 31.8.1989 and while examining the matter, the High Level Committee has also considered the

said resolution and passed resolution on 9.8.2001 declaring that it is the liability of the Board and not of the State. According to him, the board was a party to the said proceedings before the High Level Committee and since the decision of the Committee has not been challenged either by the Board or by the petitioners, it has become final in so far as the State Government is concerned and, therefore, in any case, the State Government cannot be held responsible for the same.

During the course of his further submissions, learned advocate Mr. Gandhi appearing for the petitioners has submitted that the Board is paying revised pension according to the recommendations made by the 5th Pay Commission in its report to those employees who have retired subsequent to 20th January, 1998 and, therefore, according to him, such cut off date is the creation of the Board but as such, there was no such directions of the State Government to that effect pointing out such cut off date for implementing the 5th Pay Commission and, therefore, said cut off date 20.1.1998 is arbitrary, unreasonable and discriminatory between two class of employees and the employees of both side namely those who retired prior to 20.1.1998 and those who retired subsequent to 20.1.98 are entitled for such relief w.e.f. 1.1.1996 and the Government Resolution dated 20.1.98 is also covering the case of the petitioners on the basis of the fact that whatever amendment made by the State Government in respect of the pay scale, there was resolution passed by the Board and it will automatically apply to the employees of the Board without creation of any cut of date. He also submitted that the respondeat board has violated various office orders of the State Government without any justification. He also referred to item no. 5 and 6 of the finance department resolution dated 7.1.1998 and referred to page 16 thereof. He then reiterated his submissions and submitted that the petitioners are entitled for all the reliefs with interest thereon at the rate of 18 per cent p.a.

Learned GP Mr. Oza has again reiterated the submissions which were made earlier by him the sum and substance of which is to the effect that in view of the High Level Committee's decision which is not challenged either by the petitioners or by the Board, the State cannot be held responsible for such burden. He also submitted that the State Government has already clarified its stand as per the GR dated 31.8.1989 and that stand has been accepted by the High Level Committee in its report dated 9.8.2001 and, therefore, the State

Government cannot be held responsible for such expenses and, therefore, the petitions are required to be dismissed qua State of Gujarat.

I have considered the submissions made by the learned advocates for the parties. I have also considered and perused the contentions of the parties. In view of the pleadings of the parties, certain facts emerging from the record are not in dispute between the parties. They are as under:

(1)The petitioners were the employees of the respondent Board; (2) the Board is the creation of the State of Gujarat under the Khadi Gramodyog Board Act by way of notification dated 5th May, 1960 of the Rural Development Department issued by the Deputy Secretary to the Government and published in the Government Gazette on 12th May, 1960 and, therefore, the Board has come into existence and established as per the notification dated 27th February, 1960 of the Industries and Corporation of the Government of Bombay. Certain provisions of the Act namely section 16, 17, 19, 20, 21, 22, 23, 24, 25 and 26 of the Act are relevant and material in the facts and circumstances of the case and, therefore, same are reproduced as under:

"16. Transfer of property: The State Government may transfer to a Board building, land, or any other property whether moveable or immoveable for use and management by the Board on such conditions and limitations as the State Government may deem fit for the purpose of this Act.

17. Funds of Board: (1) Every Board shall have its own fund and all receipts of the Board shall be credited thereto, and all payments by the Board shall be met therefrom.

(2) A Board may accept grants, subventions, donations and gifts and receive loans from

Government or a local authority or any body or association whether incorporated or not, or an individual for all or any of the purposes of this Act.

(3) All money belonging to the fund of a Board shall be deposited in such manner as the State Government may by a special or general order direct.

(4) The accounts of a Board shall be operated upon by such officers jointly or individually as may be authorised by the Board.

18. Application of funds and property : All property, fund and other assets of a Board shall be held and applied by it Subject to the provisions and for the purpose of this Act.

19. Subvention and loans to Board. : (1) The State Government may, from time to time, make subventions and grants to a Board for the purposes of this act on such terms and conditions as the State Government may determine in each case

(2) A Board may from time to time, with the previous sanction of the State Government and subject to the provisions of this Act and such conditions as the State Government may determine, borrow any sum required for the purpose of this Act.

20. Budget. Every Board shall, on such date as may be fixed by the State Government prepare and submit to the state Government the budget for the next financial year showing estimated receipts and expenditure on capital and revenue accounts according to the programme and the Schedule of the stock.

21. Sanction of the Budget: (1) The State Government may sanction the budget submitted to it with such modifications as it deems proper.

(2) A Board shall be competent to reappropriate such amounts as may be necessary from one scheme to another subject to the condition that the cost of any scheme as originally sanctioned shall not be exceed by more then 33 1/3%.

(3) A Board shall be competent to write off losses upto Rs. 500/in individual cases and not exceeding Rs. 5,000/- in the aggregate in any financial year in cases falling under any or all of the following categories.

(a) Loss of irrecoverable value of stores of public money due to theft, fraud or such other Causes;

(b) Loss of irrecoverable

advance other than loans, and

(c) Deficiency and depreciation in the value of stores.

22. Supplementary Budget. A Board may submit a supplementary budget for the sanction of the State Government in such form and before such date as the State Government may prescribe and the provisions of Section 21 shall apply to such supplementary budget.

23. Annual Report Every Board shall prepare and forward to the State Government in such manner as may be prescribed an Annual Report within six months from the end of the financial year giving complete account of its activities during the previous financial year alongwith a copy of the annual statement of accounts referred to in Section 25. Every such report shall be laid before each House of the State Legislature as soon as may be after it is received by the State Government.

24. Further report, Statistics and returns: Every Board shall, before such date and at such intervals and in such manner, as the State Government may from time to time direct, submit to the State Government a report on such matters and such statistics and such returns as the State Government may direct.

25. Accounts and Audit. The accounts of every Board shall be maintained and an annual statement of accounts shall be prepared in such manner as may be prescribed such account shall be audited by an auditor approved by the State Government.

26. Direction by State Government: (1) In the discharge of its functions, each Board shall be guided by such instructions on question of policy as may be given to it by the State Government.

(2) If any dispute arises between the State Government and a Board as to whether a question is or is not a question of policy the decision of the State Government shall be final.

Relevant rules framed under the Act which are relevant and material for the purpose of present petition are reproduced as under:

"2. Discipline and Appeal:-

The provision contained in the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 in force from time to time shall, mutatis mutandis, apply the officers and servants subject to the modifications that refers to Government shall be construed as reference to the Board and reference to the Government servant shall be construed as reference to an officer or servant of the Board.

(5) Pay & other conditions of service:-

(1) When the pay and other conditions of service of any officer or servant are laid down in a contract entered into by

the Board with him the officer or servant shall be governed by that contract in so far as the pay and other conditions of Service are concerned.

(2) In other cases the Bombay Civil Services Rules, 1959 as applied from time to time to Government servants, shall apply to officers and servants of the Board as regards their pay, Joining time, Foreign Service, Maintenance of records of service, Addition to pay, Travelling allowances, Combination of appointments, Leave, Revised leave and Superannuation."

Bare perusal of the provisions of the Act, Regulations and the Rules suggests that the Board shall have its own funds and all receipts of the Board shall be credited therein and all payments by the Board shall be met therefrom. The Board may accept grants, donations and receive loan from he Government or the Local authority or anybody or the association whether incorporated or not or individual or all for any of the purposes of the Act. The State Government may, from time to time, make subventions and grant to the Board for the purposes of this Act on such terms and conditions as the State Government may determine in each case. Even the State Government may determine to borrow any sum required for the purpose of this Act. Every Board shall, on such date, as may be specified by the State Government, prepare and submit to the State Government budget for the next financial year showing estimated receipts and expenditure on capital and revenue account according to the programme and schedule of the stock. The State Government may sanction the Budget submitted to it with such modification as it may think proper and the Board shall be competent to reappropriate such amount as may be necessary from one scheme to another scheme or the subject as the case may be. The Board may also submit supplementary budget for sanction of the State Government in such form and provisions of section 21 shall be applicable to such supplementary budget and the annual report is required to be prepared by the Board and the same is required to be submitted to the State Government The account and the audit is required to be maintained by the board. Important section is section 26 which is empowering the State Government in the discharge of its functions and the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government. Thus, bare perusal of these provisions makes it clear that the State Government is having all pervasive control over all the administrative

and the financial aspects of the board. If any question arise between the State Government and the Board as to whether a question is or is not a question of policy decision, decision of the State Government in that regard shall be final. It is also clear that the Gujarat Civil Service (Conduct) Rules, 1971 as well as the Gujarat Civil Service (Discipline and Appeal) Rules, 1971 which are applicable to the employees of the State Government are also applicable to the employees of the respondent No.1 Board. In view of the aforesaid provisions of the law, the respondent Board, while passing the office order on 1st March, 1989, accepted the pension scheme with a clarification that whatever pension scheme applied to the State Government employees shall also apply to the employees of the Board with all amendments which are accruing from time to time w.e.f. 30.1.1986, meaning thereby, that the Board has accepted the pension scheme with effect from 30th January, 1986 on the basis of same scheme which is applicable to the employees of the State Government from time to time, as amended by the State Government from time to time, in respect of its employees. The Board has also passed resolutions and the office orders that the State Government has sanctioned the pension cum gratuity scheme with retrospective effect which includes the family pension scheme as per the GR dated 31st August, 1989 and that will now be required to be implemented and earlier office order dated 6th July, 1990 has been cancelled. By GR dated 31.9.1989 has also been made applicable to the employees of the Board in respect of the claim of pension / gratuity. Accordingly, the respondent Board has passed resolution that the pension scheme is applicable to the Board employees as per the Government Pension Scheme applicable to the State employees with a future amendment whatever may be made by the State Government in respect of the pension scheme. Meaning thereby, entire pension scheme of the State Government has been accepted and adopted by the Board with all future amendments or changes or modifications that may be made by the State Government in future from time to time. In the letter dated 15th May, 1999 addressed to the Commissioner, claim of the present petitioners those who have retired prior to 1.1.96 and subsequent to 1.1.96 has been included. The scheme was made applicable as per the GR dated 31.8.1989 w.e.f. 12th November, 1983 to the employees of the Board wherein it has been clarified as per item no. 5 that the Board at present is paying pension to the retired employees on the basis of the old pay scale and the said expenses made are included in the miscellaneous income of head of Non Plan. Therefore, request has been made by the Board to the State Government to sanction the grant including the

expenses of 5th Pay Commission report and revised pension/gratuity. Relevant portion of the GR dated 20.1.1998 relating to the revision of pension of pre-1996 pensioners/family pensioners etc. is as under:

"Effect : In pursuance of the Government of India orders contained in the Ministry of Personnel, Public Grievances and Pension, Office Memorandum No. F.No. 45/86/97P and PW/(A)-Part II dated the 27 Oct. 1997 the matter regarding revision of pension / family pension of pre-1996 Pensioners was under consideration of the State Government. After careful consideration, the Government of Gujarat is pleased to accord sanction to the regulation of pension / family pension of existing pensioners/ family pensioners with effect from 1st January, 1996 in the manner indicated in succeeding paragraphs.

Applicability : 2. The orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.1996 under the revised pension rules, 1950 as amended from time to time and the family pension scheme, 1972 sanctioned under Government Resolution Finance Department No. FPS/1071/1688-J dated the 1st January, 1972 as amended from time to time.

Definitions : 3.1 In these orders -

(a) Existing "Pensioner" or Existing "Family Pensioner" means a pensioner who was drawing /entitled to pension/family pension on 31.12.1995.

(b) Existing 'pension' means the basic pension inclusive of commuted pension, if any, due on 31.12.1995 It covers all classes of pension under the Bombay Civil Services Rules, as amended from time to time.

(c) Existing "Family Pension: means the basic Family pension drawn on 31st December, 1995 under the Family Pension Scheme, 1950 as contained in the Revised Pension Rules, 1950 or the Family Pension Scheme, 1972 as amended from time to time.

(d) Existing "Temporary increase" (Dearness Relief) means the temporary increase due to pensioners/family pensioners upto average CPI

1510 at the rates contained in Government Resolution NO. HGV/5496/GOI.14/P-1 dated the 23rd April, 1996."

Item 4.4 of the said resolution on internal page 3 (page 43 of the compilation) is reproduced as under:

"4.4 The amount already paid on account of interim relief III (Third Sanctioned under Government Resolution Finance Department No. NVT/1196/GOI/8/P dated 26th September, 1996 will be recovered from the arrears becoming due on consolidation of pension/family pension and sanction of temporary increase (Dearness Relief) on Consolidated Pension/Family Pension."

Item 11 of the said resolution is reproduced as under:

"11. It is considered desirable that the benefit of these orders should reach the pensioners as expeditiously as possible. To achieve this objective it is desired that all pension disbursing authorities should ensure that the revised pension and arrears due to the pensioners in terms of the above orders is paid to the pensioners or credited to their bank accounts by 31st March, 1998 or before positively."

At this stage, it is required to be considered that the similar question had arisen when pension scheme was made applicable to the employees who were the members of the CPF Scheme on 30.1.1986 but subsequently demand was made by the employees who were retired prior to 30th January, 1986 and subsequent to 12th November, 1973. Said question was considered by the Board in past and the resolution was passed by the respondent Board on 13.10.1987 that the employees who were in service on 12th November, 1973 were entitled for the benefit of pension and gratuity and those employees who were in service from 12th November, 1973 to 31st March, 1982 are entitled for the benefit of revised pension as per the Revised Pension Rules of the State Government and the Family Pension Rules, 1972 as revised and amended from time to time and for that, representation was made by the Board to the State Government. Ultimately, the State Government has, by GR dated 31st August, 1989, accepted the Board's representation and/or proposal and it has been resolved that the Bombay Civil Services Rules will be applicable to the employees of the Board with effect from 1973 and,

therefore, benefit of pension cum gratuity must be given to the employees who have retired subsequent to 12th November, 1973 and in respect of the CPF, scheme of pension cum gratuity was covered by the revised pension rules of the State Government and the Family Pension Rules, 1972 and, therefore, in past, the State Government has accepted the proposal of the Board dated 6.11.1987 and accordingly, the benefits were given with retrospective effect from 12th November, 1973 including the revision of pension rules, 1950 and the family pension rules, 1972. In the said resolution, it has also been clarified that the pension/gratuity scheme of the State Government as amended from time to time will apply to the employees of the Board, automatically but it has been clarified that the expenses will be borne by the board and the State Government will not bear single pie of such expenses. However, as per the details of the budget given at page 92 for the period from 1962 to 1991, expenses of pension have also been included in the budget provision and since last more than 30 years, the State Government has been sanctioning the budget wherein expenses of pension were included by the respondent board. The details given at page 92 have not been disputed either by the State Government or by the Board. At this stage, it is also necessary to be considered that this court has passed order dated 17.10.2000 wherein on prima facie considerations, it has been observed by this court that there cannot be any legitimate defence from the side of the respondents against the claim of pre 96 pensioners. Relevant observations made by this court in its order dated 17.10.2000 while constituting the High Level Committee are reproduced as under:

"1. Having heard the learned counsel for the parties and perusing the pleadings of the parties and more particularly the resolution of the Government dated 20th January, 1998, prima facie, I am satisfied that there cannot be any legitimate defence from the side of the respondent against the claim of Pre 96 pensioners. So far as the claim of post 96 pensioners is concerned, it is to be stated that it has to be first taken care of and decided by a High Level Committee to be constituted. It has been informed to the Court by the learned counsel for the State of Gujarat that Member Secretary of the Board is a Government Officer. Further, the counsel for the Board stated that the Board is receiving 100 per cent grant from the Government and whatever liabilities of the Board of revised family pension or pension falls on the Government

and this money has to come from the exchequer of the Government."

Aforesaid observations made by this court while passing the order dated 17.10.2000 have remained unchallenged because subsequently because of the order dated 9th August, 2001 passed by the High Level Committee, the petitions have been revived by this court but the observations have remained as it is.

Admittedly, the respondent Board has accepted 5th Pay Commission Report on the same terms and conditions which were accepted and adopted by the State Government w.e.f. 1.1.1996, on 31st March, 1998. Accordingly, the State Government has issued resolution on 4th May, 1998 and made applicable the 5th Pay Commission report in favour of the employees with effect from 1.1.1996 and the Board should have to implement the resolution dated 4th May, 1998 while keeping in view the resolution passed by the Finance Department dated 7th January, 1998 of the State Government wherein the State Government has accepted the 5th Pay Commission Report w.e.f. 1.1.1996 and made provisions in favour of the employees who have retired prior to 1.1.1996 and they all are entitled to revision of pay scale as per the 5th Pay Commission Report and also they are entitled for revision of their pension and the Government has accepted the payment of such revision of pension to the concerned employees who have retired prior to 1.1.1996. Similarly, as regards those who have retired subsequent to 1.1.1996, similar benefit was given to such employees and they were also entitled for the revised pension according to the revised scale. Therefore, in view of these two resolutions dated 7.1.1998 and 4.5.1998, the petitioners are entitled for the benefit as a matter of right on the basis of the aforesaid Government resolutions because the GR dated 4th May, 1998 has been issued by the State Government and it was made applicable and thereby 5th Pay Commission Report was made applicable to the employees of the respondent Board w.e.f. 1.1.1996. Item 5 of this resolution dated 4th May, 1998 is required to be implemented for the purpose of fixing revised scale and the arrears as per the Finance Department Resolution dated 7th January, 1998 which is at page 25 Annexure F to the SCA No. 8687 of 1999 and, therefore, considering these two GRs and item no.5 thereof, I am of the opinion that the case of the petitioners in both the petitions is fully covered by the said resolutions and the petitioners are, therefore, entitled for the benefit of revision of pay scales as per the recommendations made by the 5th Pay Commission and they are also entitled for the benefit of revision of

pension and gratuity from the respondents. I am of the opinion that these two GRs are enough to justify the claim of the petitioners herein and, therefore, now the respondent board as well as the respondent - State of Gujarat cannot raise any objection for implementing the said two resolutions which are made applicable to the employees of the Board by the State of Gujarat. It is immaterial whether the Board has accepted it subsequently and on that ground, such benefit cannot be denied to the employees of the Board. Said Resolution dated 4.5.1998 is very much important for the purpose of present group of petitions. It has been resolved under the said resolution that the Government has granted approval to apply the revised pay scales as per the schedule to the said resolution for the officers/employees of the Gujarat Rajya Khadi Gramodyog Board with effect from 1.1.1996. English Version of Item 5 of the said resolution (internal page 3 of the said resolution) is as under:

"(5) Revised pay scales have to be made applicable subject to the provisions of the Gujarat State Khadi Gramodyog Board Gujarat State Service (Revision of Pay) Rules, 1998 and the payments of arrears as per the revised pay scales also have to be made only in accordance with the instructions contained in the Resolution dated 7.1.1998 bearing No. PGR.1098.1.M of the Finance Department. For the amount of additional expenditure/arrears amount to be incurred because of the application of the revised pay scales, provisions are required to be made in the supplementary budget by submitting proposal to the Budget Department through Gujarat Rajya Khadi Gramodyog Board Budgetary Provision Department."

Item No. 5 and 6 of the Resolution dated 7th January, 1998 which are at page 26 of the petition (internal page 2 of the resolution dated 7.1.1998 are also required to be taken into consideration. Gujarati version of item no.5 and 6 of the said resolution dated 7.1.1998 could be translated as under in English :

" That in cases of the employees who have retired prior to 1st January, 1996, their pension will have tobe revised a fresh on centre basis and as per the formula of the centre and payments will have to be made accordingly.

That in the matter of the employees retiring after 1st January, 1996, all the benefits of retirement on the basis of the centre will be

granted."

It is also necessary to note that as per the resolution dated 4th May, 1998, 5th Pay Commission was made applicable to the employees of the Board with effect from 1.1.1996 and the employees of the respondent Board are entitled for the revision of pay, pay scale as per the Pay Rules, 1998 and the payments of arrears as per the revised pay scales also have to be made only in accordance with the instructions contained in the Resolution dated 7.1.1998 bearing No. PGR.1098.1.M of the Finance Department. For the amount of additional expenditure/arrears amount to be incurred because of the application of the revised pay scales, provisions are required to be made in the supplementary budget by submitting proposal to the Budget Department through Gujarat Rajya Khadi Gramodyog Board Budgetary Provision Department. Meaning thereby, that the budget will be sanctioned by the State Government on the basis of 100 per cent finance given by the State Government.

Similarly, as stated above, item no.5 of the resolution dated 4.5.98 provides to implement said GR as per Finance Resolution dated 7.1.1998 that in cases of the employees who have retired prior to 1st January, 1996, their pension will have tobe revised a fresh on centre basis and as per the formula of the centre and payments will have to be made accordingly and item No. (6) of the said resolution dated 4.5.98 provides that in the matter of the employees retiring after 1st January, 1996, all the benefits of retirement on the basis of the centre will be granted. Thus the resolution dated 7.1.98 is providing for the employees who have retired prior to 1.1.1996 and subsequent to 1.1.1996.

Therefore, considering the substance of the matter and the questions raised by the learned advocates for both the sides, and also considering the resolutions dated 4th May, 1998 and 7th January, 1998, I am of the opinion that the resolutions dated 4th May, 1998 and 7th January, 1998 are the clear answer to the rival contentions and questions raised by the learned advocates for the respondents. Therefore, considering the said two resolutions as aforesaid, contention raised by both the respondents about the entitlement of the petitioners for the reliefs prayed for in these petitions cannot be accepted and entertained. In view of that, the contention raised by the learned Sr. Advocate Mr. Vyas for the Board that since the 5th Pay Commission Report was made applicable to the employees of the Board by the State Government on 4th May, 1998 , those employees who

were in service on 4th May, 1998 and retired subsequently alone are entitled for such benefit and those who have retired prior to 4th May, 1998 are not entitled for such benefit is contrary to the spirit of the said two resolutions and, therefore, said contention cannot be accepted and entertained by this court. All the employees whether they have retired prior to 4th May, 1998 or subsequent to 4th May, 1998, all of them are entitled for such benefits. In view of the clear language with clear mandate given by the State Government to the respondent Board that the Board shall have to act according to the directions contained in section 26 of the Act, the third contention raised by the learned Senior advocate Mr. D.D. Vyas is also ill founded and the same also cannot be entertained and accepted as the same is contrary to the directions issued by the State Government in section 26 of the Act.

I have also perused the decisions relied upon by the learned Sr. Advocate Mr. Vyas, referred to hereinabove. I also agree with the principles laid down by the apex court in the said decisions. however, in the facts and circumstances of the present group of petitions, I am of the opinion that the ratio laid down in the said decisions would not apply to the facts of the present case as the facts of the present group of petitions are not identical but are altogether different from the facts of the cases before the apex court. I am of the opinion that the resolutions dated 4th May, 1998 and 7th January, 1998 are entitling the petitioners in these groups of petitions to claim and receive the revised pay scale w.e.f. 1.1.1996 because according to both the resolutions, the petitioners herein are entitled for the revision of their pay scales w.e.f. 1.1.1996 and, therefore, once both the resolutions are made applicable to the petitioners herein, then, as a result thereof, the salary of each petitioner is required to be revised irrespective of his date of retirement. His date of retirement is not relevant and material. Whether he has retired prior to 1.1.96 or subsequent to 1.1.1996, he is entitled for the benefits flowing from the 5th Pay Commission as per the aforesaid two resolutions. Then the question arise about the revision of pension/gratuity. That aspect has also been clearly considered by the State Government while passing the GR dated 20.1.1998 where the effect has been given to those pensioner / family pensioner who were drawing the pension/family pension on 1.1.1996 under the revised pension rules, 1950 as amended from time to time and the family pension scheme 1972 sanctioned under the GR dated 1st January, 1972 as amended from time to time.

Therefore, all the petitioners in these two groups of petitions were receiving pensionary benefits or drawing pension on 1.1.1996 on the basis of revised pension rules 1950 and, therefore, considering the definition of the term 'existing pensioner', existing pensioner means a pensioner who was drawing /entitled to pension/family pension on 31.12.1995 as per the G R dated 20th January, 1998, since the petitioners concerned were drawing the pension as on 31st December, 1995, they are entitled for revision of their pension as per the 5th Pay Commission Report considering the definition of the term pension, pension means the basic pension inclusive of commuted pension, if any, due on 31.12.1995 It covers all classes of pension under the Bombay Civil Services Rules, as amended from time to time, if any due on 31st December, 1995 which covers all classes of pension under the BCSRs as amended from time to time and, therefore present petitioners are covered by the definition clause item (3) (a) (b) of the GR dated 20.1.1998 because all the petitioners were receiving pension on 31.12.1995 and subsequent to 31.12.1995 but that was based on the old pay scale (pre-revised pay scales) and that is how the dispute has arisen between the parties. The said resolution dated 20.1.1998 has been made applicable to the employees of the board with effect from 1.1.1996 to the existing pensioners as per the definitions hereinabove. The said GR dated 20.1.1998 has also been accepted adopted by the Board but the only difference is to the effect that the respondent board is paying revised pension and gratuity to the employees who were in service on 4th May, 1998 and retired subsequent thereto and the board is not paying the same to those employees who have retired prior to 4th May, 1998. Therefore, the said GR dated 20.1.1998 has been accepted by the Board and the State Government has made it applicable to the respondent Board but the Board itself has, at its own, created the situation which is contrary to the GR dated 20th January, 1998 and that was not the direction of the State Government and, in view of that, therefore, the contention raised by the learned Sr. Advocate Mr. Vyas that the petitioners are not entitled for such benefit as claimed in this petitions as they retired prior to 4th May, 1998 cannot be accepted and entertained by this court and the same is, therefore, rejected. Considering the GR dated 20.1.1998 and other relevant resolutions discussed hereinabove, I am of the view that all the petitioners are entitled for the similar treatment and benefit irrespective of their date of retirement whether they have retired prior to 4th May, 1998 or subsequent to 4th May, 1998. Therefore, considering the GR dated 20th January, 1998, I am of the opinion that all the

petitioners concerned in these petitions are entitled for such relief irrespective of their date of retirement. Therefore, the classification which has been created by the Board is after thought, contrary to the above Government Resolutions passed by the Government and accepted by the Board and, therefore, this Court is of the view that such classification is irrational, unreasonable, arbitrary and the same is, therefore, required to be quashed and set aside. Therefore, considering the GR dated 4.5.98; 7.1.98 and 20.1.98, this court is of the view that all the petitioners in these petitions are entitled for all the benefits as prayed for namely revision of pay scale as per 5th Pay Commission Report, revision of pension and on that basis, also for the gratuity. In view of the said resolutions, considering the directions mandate issued by the State Government to the respondent Board, the contention raised by the learned Sr. Advocate Mr. Vyas about the entitlement of the petitioners cannot be accepted and the same is not supported by the decisions relied upon by him. Considering the aforesaid Government Resolutions, this court is of the view that there is no question of entitlement of the petitioners. On the contrary, it is clear case of undisputed position so far as the claim and entitlement of the petitioners is concerned and, therefore, the submissions made by the learned Sr. Advocate Mr. DD Vyas in that regard cannot be entertained and accepted and the decisions relied upon by him are not applicable to the facts of the present case and, therefore, his submissions in that regard are rejected. The respondent Board has not raised contention in its pleadings or at the time of hearing of these petitions that the said GRs dated 4.5.98, 7.1.98 and 20.1.1998 are not applicable to the Board. The Board has also not raised such contentions that the said GRs are not applicable to the employees of the Board. On the contrary, said GRs were accepted and adopted by the Board and were also implemented by the Board by creating discriminatory situation between same class without any justification. There was no reasonable classification at all. The distinction itself is unreasonable, irrational arbitrary and contrary to the directions issued by the State Government under section 26 of the Act.

Said classification made by the board is not based upon the said three resolutions and the same is not having any foundation and the same is also not satisfying the twin test of classification. Classification does not stand the test of Article 14 and 16 of the Constitution of India. It is, therefore, violative of the equal treatment guaranteed in Article 14 of the Constitution of

India. Said aspect has been examined by the Apex court in the matter of V Kasturi v. M.D. State Bank of India, Bombay reported in AIR 1999 SC page 81. In para 20, 21 and 22 of the said judgment, it has been observed by the apex court as under:

"20. It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly gets projected.

Category I

21. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara's case (AIR 1983 SC 130) (supra) would cover this category of cases.

Category II:

22. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension

of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retires non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : Commander, Head Quarter, Calcutta v. Capt. Biplabendra Chanda, (1997) 1 SCC 208 : (1997 AIR SCW 2564) (supra) and Govt. of Tamil Nadu v. K. Jayaraman, (1997) 9 SCC 606 : (1997 AIR SCW 1434) (supra) and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such additional beneficial provisions. But if on the other hand the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme, would disentitle him from getting such a new benefit.

Recently, said decision was considered by the Karnataka High Court in the matter of YR Shenoy and Others and Syndicate Bank and Others reported in 2003 (II) LLJ 977. It has been observed by the Karnataka High Court in para 18 of the said judgment as under:

"18. Now coming to the discrimination or arbitrariness in denying the gratuity on the basis of the revised pay scale is concerned it is not in dispute that the benefit of the revised pay scale was given to all persons who retired between July 1, 1993 to June 23, 1995 except the gratuity benefit. However, persons who retired between November 1, 1994 and June 23, 1995 were given the benefit of gratuity on the basis of revised pay scale. But employees who retired between July 1, 1993 and October 31, 1994 were deprived of the same. If persons who retired prior to the date of joint note and who retired subsequent to the joint note are treated as a lass by themselves and persons who retire prior to the joint note had been denied the benefit

which was given to persons who retired subsequent to the joint note it should be said there is a reasonable classification. Then such a case is covered under Category-II in V. Kasturi's case referred to supra. But, if among the persons who retired prior to the date of Joint note two classes are created and one class is given the benefit and another class is deprived of that benefit the arbitrariness is manifest. Though on the date of the joint note persons who had retired between November 1, 1994 and June 23, 1995 are held to be eligible to get the gratuity on the basis of the revised pay the same class of pensioners who have retired between July 1, 1993 and October 31, 1994 cannot be denied the aforesaid benefit merely because they retired prior to November 1, 1994. There is absolutely no nexus sought to be achieved and there is no rationale behind such qualification. Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. However, the said classification should satisfy the twin test of classification founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational relation to the objects sought to be achieved, the employees who have retired prior to the date of joint note would form a class by themselves. If among the said class benefit of gratuity on the basis of revised pay scale is given to persons who have retired subsequent to November 1, 1994 and deprived to those who have retired earlier to November 1, 1994, it is manifestly arbitrary. The said classification is not founded on any intelligible differentia which distinguishes persons who have retired before November 1, 1994 and persons who have retired subsequent to November 1, 1994 much less that differentia has any rational nexus to the object sought to be achieved. Therefore, the instant case falls squarely under Category-I in V. Kasturi's case.

Recently, the apex court has considered and explained the concept of pension in the matter of Kerala State Road Transport Corporation appellant versus K.O. Varghese and others reported in 2003 Lab IC 2042. Relevant Head Note at page 2043 of the said judgment is reproduced as under:

"There are different classes of pensions and different conditions govern their grant. It is almost in the nature of deferred compensation for services rendered. There is a definition of pension in Art. 366 (17) of the Constitution of India, but the definition is not all pervasive. It is essentially a payment to a person in consideration of past services rendered by him. It is a payment to a person who had rendered services for the employer, when he is almost in the twilight zone of his life.

[Para 12]

A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want with decency, independence and self-respect and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? Pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of 'socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to aging progress and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and, therefore, can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and pecuniary if there is nothing to fall back upon. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is

> dependent upon an additional condition of impeccable behaviour even subsequent to retirement. That is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure. It may be bestowed on such persons and on such terms as the law making body of the Government prescribes, and it is, at most, an expectancy granted by the law. The term 'pension' has been compared and distinguished from 'bonus,' 'compensation,' 'profits' and 'retirement payment.' A pension fund is to be distinguished from an annuity fund derived in part from voluntary contributions under a statutory option to contribute or refrain from contributing."

Similarly, the State Government, while having complete control over the Corporate Body or the Corporation or Board created by the statutory provisions cannot shirk the responsibilities to deny the pay, salary and other benefits due in favour of its employees. In such circumstances, the Court is obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of the human rights of the citizen of India at the hands of the State. The financial stringencies may not be a ground for not issuing the requisite directions when a question of violation of the fundamental right arises. The State Government as per the provisions of the Khadi and Village Industries Act, 1960 is directly or vicariously liable to pay the salary/remuneration and other retirement benefits of the employees working in the Khadi Board. In such circumstances, the COurt would not hesitate to lift the veil and look into the realities so as to identify the persons who are guilty and liable thereof. Whenever a corporate entity is abused for such an unjust and unequitable purpose the corporate veil can be pierced when corporate personality is found to be opposed to justice against the employees. The principles behind the doctrine is a changing concept and it is expanding its horizon as was held in the State of U.P. and Others vs. Renusagar Power Company & Others [(1988) 4 SCC 59]. The ratio of the said decision clearly suggests that whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and took into the realities so as to identify the persons who are guilty and liable therefor. In the matter of Kapila Hingorani v. State of Bihar, reported in 2003 (4) Supreme, page 1, it has been held by the apex court as under in para 25, 27, 62, 64, 69 and 73 :

"25. It is now well-settled that the corporate veil can in certain situations be pierced or lifted. The principles behind the doctrine is a changing concept and it is expanding its horizon as was held in the State of U.P. and Others vs. Renusagar Power Company & Others [(1988) 4 SCC 59]. The ratio of the said decision clearly suggests that whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and took into the realities so as to identify the persons who are guilty and liable therefor.

26. xx xx

27. The corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest. [See C.I.T., Madras vs. The Meenakshi Mills Ltd. & Ors. [(1967) 1 SCR 934]; Workmen Employed in Assn. Ruber Industry Ltd., Bhavnagar vs. Associated Rubber Industry Ltd., Bhavnagar & Another, [(1985) 4 SCC 11]; New Horizons Ltd & Another vs. Union of India and Others [(1995) 1 SCC 478]; State of U.P. and Others vs. Renusagar Power Co. and Others [(1988) 4 SCC 59]; Hussainbhai, Calicut vs. The Alath Factory Thezhilali Union, Kozhikode and Others [(1978) 4 SCC257]; and Secretary H.S.E.B. vs. Suresh and Others, [(1999) 3 SCC 601].

28 to 61 : xx xx

62. The matter may be considered from another angle. While the State expects the industrial houses and multi-national companies to take such measures which would provide a decent life to the persons living in the society in general and to their employees in particular and in that premise it is too much to ask the State to practise what it preaches? This gives rise to another question. Can the State be so insensitive to the plight of its own citizens in general and the employee of the public sector undertakings in particular?

63. The court in a situation of this nature is obligated to issue necessary directions to mitigate the extreme hardship of the employees

involving violation of human rights of the citizens of India at the hands of the State of Bihar and the Government companies and corporations fully owned or controlled by it. A right to carry on business is subject to compliance of constitutional obligations as also limitations provided for in the Constitution.

64. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises. This court has been highlighting this aspect in the matters concerning fundamental rights and maintenance of ecology. [See Rural Litigation and Entitlement Kendra and others Vs. State of Uttar Pradesh and Others AIR 1987 SC 359 = (1986) Supp. SCC 517, Municipal Council, Ratlam - (1980) 4 SCC 162 and B.L. Wadhera vs. Union of India - AIR 1996 SC 2969]. In All Indian Imam Organization and Others vs. Union of India and Others [(1993) 3 SCC 584], this Court held:

"6. ...Much was argued on behalf of the Union and the Wakh Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created."

69. The State must thank itself for having

placed itself in such a state of affairs. If at an appropriate stage, having regard to its right of deep and pervasive control over the Public Sector Undertakings it had properly supervised the functioning of the Government Companies and take necessary steps to refer the sick companies to BIFR in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, the position might have been different. It even failed to take any positive action even after coming to know the starvation deaths and immense human sufferings.

73. We, however, hasten to add that we do not intend to lay down a law, as at present advised, that the State is directly or vicariously liable to pay salaries/remunerations of the employees of the public section undertakings or the Government companies in all situations. We, as explained hereinbefore, only say that the Sate cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary to the employees of Public Sector Undertaking for such a long time. We are not issuing any direction as against the State of Jharkhand as no step had admittedly been taken by the Central Government in terms and furthermore as only four public sector undertakings have been transferred to the State of Jharkhand in respect whereof the petitioner does not make any grievance.

In view of what is stated hereinabove, the contentions raised by the learned advocate Mr. Oza are also contrary to the record. Mere submission that the State Government is not liable to make payments to the petitioners is not enough. Same is required to be supported and substantiated by the material on record. Learned GP Mr. Oza has relied upon two decisions. One is the decision of the High Level Committee dated 9th August, 2001 and the second is the GR dated 31t August, 1989 wherein it was made clear that it is not the burden upon the State Government to make payments of necessary benefits to the employees of the Board. High Level Committee has also based its decision on the said GR dated 31.8.1989 where the Board was admittedly a party. If the submissions made by the learned GP Mr. Oza are really appreciated, then, it amounts not to granting 100 per cent grant to the Board. But, on the contrary, it is

the case to the effect that the Government has been giving 100 per cent finance to the respondent Board in all respects. This would mean that whatever budget submitted by the board before the State Government was being sanctioned by the State Government. There are also provisions even for supplementary budget for meeting with the additional expenditure and thus it is clear that ultimately the burden is being shifted on the State Government in all respects. The resolutions dated 4.5.98, 7.1.98 and 20.1.98 are made applicable to the board by the State Government and it has been clarified by the State Government that while implementing the 5thPay Commission Report for revising the pay scale in respect of the employees of the Board with effect from 1.1.1996, whatever expenses in respect of the amount of arrears are required to be paid by the Board and for that, the Board is required to make necessary provisions in the budget and is required to submit necessary proposal in the State Government while making provisions in the budget and accordingly, the respondent State Government will pass or sanction the same. Here, additional affidavit for subsequent event filed on behalf of the petitioners is also required to be considered. This Court has considered para 3 thereof and has also considered ANnexure D page 92 thereof which is relating to the period from 1962 to 1991 for which, budget submitted by the Board has been sanctioned by the State Government in respect of the expenses of pensionary benefits which were also included in each year.The averments made in para 3 of the said affidavit of subsequent event have not been denied by either of the respondents. The contents of page 92 annexure D to the said affidavit of subsequent event have not been challenged or controverted by either of the respondents and in view of that, it is clear that the submissions made by the learned Government Pleader Mr. Oza that the State is not responsible and the Board alone is responsible cannot be accepted or entertained by this court and the same is, therefore, rejected and in view of that, the submission of Mr. Oza that since the Board has not challenged the decision of the High Level Committee, the petitions are required to be dismissed qua State of Gujarat also cannot be entertained and accepted and the same is, therefore, rejected because ultimately, said report was under challenge before this Court after revival of these petitions and non challenge by the board would not come in the way of this court while granting reliefs in favour of the petitioners. That submission is also, therefore, rejected. The decision of the High Level Committee dated 9.8.2001 and the GR dated 31.8.1989 are not relevant and reliable in light of considering the

practice and conduct of both the respondents which is totally contrary to the decision dated 9.8.2001 and the GR dated 31.8.1989 because that Board is including the expenses of pension each year in the budget from 1962 onwards as per annexure D page 92 and that the Budget including pension amount is being sanctioned by the State Government on the basis of giving 100 per cent full finance by way of grant to the respondent Board. Means, both the respondents are jointly and severally liable for payments of pension and gratuity.

According to my opinion, considering the aforesaid Government Resolutions in light of the facts and circumstances of the present case, it is the joint and several responsibility of the respondent NO.1 Board and the State of Gujarat because the respondent NO.1 is the creation of the State Government which is getting hundred per cent finance from the State Government. It is not in dispute that whatever salary expenses incurred by the respondent no.1 board is becoming part and parcel of its budget which is ultimately being sanctioned by the State Government. Thus, since the State Government is the sanctioning authority of the budgets of the respondent NO.1 Board, it also cannot shirk from its ultimate responsibility. This is nothing but a part of the budget submitted by the board and sanctioned by the State Government. Even the Gratuity has also been considered to be the wages and the pension is being considered to be deferred wages. After all, both are relating to the result of services rendered by the employee in the Board and, therefore, when the State Government is sanctioning the pay and allowances which are paid by the Board, the State is not justified in saying that it will not bear the burden of such expenses arising out of the implementation of the recommendations made by the 5th Pay Commission. Therefore, it is clear that the stand taken by both the respondents are contradictory and according to my opinion, it is nothing but a family dispute without any legal basis so far as the board and the State Government are concerned and the petitioners herein are the worst sufferers of such internal dispute between the Board and the State Government since last more than five years for no fault on their part and such formal disputes cannot be entertained by this court and same is required to be ignored for want of any legal basis for that. Therefore, according to my opinion, when the retirement benefits which were the legitimate rights and claims of the petitioners have been withheld by the respondents without any justification, when the respondents have withheld such amount for such a long period as well as utilized

the same and, therefore, I am of the opinion that the petitioners are entitled to receive and recover such amount from the respondents with interest thereon. The petitioners are praying for directing the respondents to pay such amount with running interest at the rate of 18 per cent p.a. However, I am of the opinion that considering the existing rate of interest and considering the total period and the financial constraints, it would be just and proper if the respondents are jointly and severally directed to pay such amount with running interest at the rate of 9 per cent p.a. from the date of such entitlement. Therefore, according to my opinion, the petitioners are entitled for the benefits of the 5th Pay Commission as per the Government Resolution dated 4.5.98. The petitioners are entitled for the benefit of of the GR dated 7.1.1998 for revision of their last drawn salary with effect from 1.1.1996, irrespective of their date of retirement. Whether they have retired prior to 1.1.1996 or subsequent to 1.1.1996 is immaterial for the purpose of their entitlement for such benefits. I am also of the opinion that the petitioners are entitled for revised pension and gratuity benefits on the basis of the GR dated 20.1.1998, with effect from 1.1.1996 or on the date on which each of the petitioner has retired from service, with interest at the rate of 9 per cent p.a. from the date of their entitlement. Now I am considering as to who will make payment or who is liable to make payment to the petitioners. Considering various circulars ad effect thereof and also considering various provisions of the Act, Regulations and also considering para 3 of the affidavit of subsequent effect and annexure D thereto at page 92, I am of the opinion that it was a joint venture of both the respondents and, therefore, both the respondents are jointly and severally liable to make such payment. As such, the respondent board is the creation of the State Government. It has been created by the State Government for achieving the purpose of the Act and thus, it is a body completely controlled by the State Government. Therefore, both the respondents are jointly and severally liable to make payment to the petitioners with interest at the rate of 9 per cent p.a. from the date of their entitlement.

In the result, all these group of petitions are allowed. Action of both the respondents in denying the legal benefits to the petitioners in respect of their revised pay scales as per the 5th Pay Commission Report, revised pension and the gratuity etc. are hereby quashed and set aside. It is hereby declared and held that both the respondents namely respondent No.1 Board and the respondent NO.2 State of Gujarat are hereby jointly and

severally liable. Respondents No.1 and 2 are, therefore, directed to revise the pay scale of each of the petitioners on the basis of the GRs dated 4.5.98 and 7.1.98 and to revise the pensionable pay of the petitioners and gratuity benefits on the basis of the GR dated 20.1.1998 with effect from 1.1.1996 or from the date on which each petitioner has retired from service or become eligible and to pay the arrears of such benefits to each of the petitioners with interest at the rate of 9 per cent p.a. from the date of their entitlement till 31.12.2003 within six months from the date of receipt of copy of this order. Both the respondents are further directed to pay monthly revised pension to each petitioner from January, 2004 onward regularly till the date they are entitled in accordance with the pension Rules. Rule is made absolute in terms indicated hereinabove with no order as to costs.

( HK Rathod,J.)

Vyas